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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Applications of WorldCom, Inc. and
MCI Communications Corporation for
Transfer of Control of
MCI Communications Corporation to
WorldCom, Inc.

CC Docket No. 97-211

To: The Commission

**COMMENTS OF GTE SERVICE CORPORATION, ITS AFFILIATED
TELECOMMUNICATIONS COMPANIES, AND GTE INTERNETWORKING,
ON WORLDCOM/MCI'S JOINT REPLY TO PETITIONS TO DENY
AND COMMENTS**

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Comments of GTE
March 13, 1998

Summary

WorldCom and MCI have asked the Commission to approve the largest merger in history, involving the second and fourth largest domestic and international interexchange carriers and two largest Internet backbone providers. Nonetheless, their applications and Joint Reply are devoid of any tangible evidence concerning the competitive and public interest effects of the transaction. Indeed, while the Joint Reply "contains over two hundred pages of factual information, legal arguments and expert affidavits," very little of that material is even remotely responsive to the types of showings required under the governing *Bell Atlantic/NYNEX* standard.

Rather than making a *Bell Atlantic/NYNEX* showing, WorldCom and MCI strive to shift attention away from the serious competitive risks engendered by their combination. For example, they suggest a host of novel and unsustainable market definitions that lump different services, customers, and geographic areas into massive, undifferentiated categories. These definitions are self-serving and inconsistent with Commission precedents and customer demand. In addition, the Applicants blithely submit there are efficiencies enough to overcome any anticompetitive effects arising from the merger. Yet, they decline to offer any insights into the data, assumptions and methodology upon which their unrealistic claim of multi-billion dollar savings is based (other than that the efficiencies derive from rationalization of currently competing activities).

In contrast to the superficial and dismissive nature of the WorldCom/MCI filings, GTE and other adversely affected parties have made a compelling showing that the proposed combination would harm consumers in virtually all relevant markets and have cast serious doubt on the nature and size of the claimed efficiencies and synergies:

Domestic long distance. The merger would increase concentration in domestic long distance markets by an amount that far exceeds the “likely to create or enhance market power” threshold contained in the FTC/DOJ *Merger Guidelines*. It also would reverse WorldCom’s incentive to act as a responsive supplier of low-cost capacity to resellers, which are the only counterweight to the cooperative, lock-step pricing of mass market services by AT&T, MCI, and Sprint. These resellers have substantially benefited residential and small business consumers, and their growing success has been due largely to WorldCom’s presence as a maverick wholesaler. After the merger, WorldCom’s incentives would change to match those of the current Big 3, which have been reluctant to supply resellers on a competitive basis. WorldCom would raise its wholesale rates, thus undermining the resellers’ already thin margins and effectively neutralizing resale as an ever-growing competitive check on the long distance oligopoly. The result would be an increase in prices to residential and small business customers.

WorldCom and MCI point to the entry plans of several new fiber carriers as a cure-all for these competitive concerns. This entry, however, will not be “timely, likely, and sufficient” to counteract the anticompetitive impact of the merger and therefore would not be considered relevant under applicable antitrust standards. Contrary to the Applicants’ claims, fiber alone does not create a competitor; in fact, all of the new entrants identified by WorldCom and MCI face massive entry barriers. For example, their networks will serve only dense routes, forcing them to incur substantial costs in serving off-net areas. They will lack the substantial economies of scale and scope enjoyed by the Big 3 and WorldCom, further increasing their cost disadvantage. They will be compelled to spend tremendous resources deploying trunks, lines, switches,

other equipment, and SS7. And, they will need to develop the OSS and applications software necessary to manage their networks and provide advanced services. Plainly, none of these new entrants will be able to undercut the merged entity's market power, if at all, for five or more years – well beyond the two-year period established by the *Merger Guidelines*.

International services. The Applicants claim that all international services fall into one indistinguishable market characterized by robust competition on a global basis. Their product and geographic market definitions, however, are wholly at odds with customer realities and Commission precedent. In reality, the merger raises danger signs for private line and IMTS customers needing service to scores of countries around the world where the combined company would be the predominant or even sole provider. Those customers, unlike the Applicants, recognize that private line and IMTS services are not substitutable for many purposes, and thus fall into separate product markets. They also understand, unlike the Applicants, that the existence of competition to one country does not help them obtain competitive rates to another nation half the world away where the merged entity has a stranglehold on traffic.

Internet. Notwithstanding recent FCC analyses to the contrary, the Applicants define Internet product and geographic markets to include anything and anyone involved in any way with the provision of Internet services and argue that the merger would not compromise the future development of the Internet. However, the vigor of their protests cannot overcome the lack of rigor in their analysis. The combined company would hold a dominant share (possibly fifty percent or more) of the Internet backbone market, which is clearly separate from Internet access and content services.

It would also control two of the key Network Access Points (NAPs). Internet backbones now are dependent upon one another for the interchange of traffic, even as they compete to provide backbone service to ISP web sites and regional networks. Thus, they have a strong incentive to enter into cooperative arrangements for interchanging traffic in order to create and share in the benefits of network economies. Allowing the merger to proceed would give an outsized WorldCom/MCI the incentive and power to harness network externalities to disrupt currently cooperative interconnection practices. The merged entity would be set on the path to exploitation of entities that must connect with it and to monopolization of this critical product market. As WorldCom's John Sidgmore has admitted, "Having a big network is a huge barrier to entry for competitors."

Local exchange. Considering that the centerpiece of Applicants' claimed benefits of the merger is a purportedly increased ability to provide competitive local exchange services, the lack of information regarding the two company's network overlaps and competitive plans is particularly stark. They seem to suggest that the relevant geographic market is limited to the precise routes where their facilities lie in the ground, essentially arguing that there will be no reduction in competition because the WorldCom/Brooks/MFS network may lie across the street from MCIMetro's. At the same time, though, their SEC filings statements indicate that the merged company will reduce its local exchange investment, and Wall Street analysts tout reduced local exchange price competition as a benefit of the merger. Thus, the applications and Joint Reply provide no basis for making an informed judgment regarding the competitive effects of the proposed merger in the local exchange market.

Public interest benefits. The Applicants have failed to disclose the data, assumptions, and calculations underlying their claim that the merger will yield billions of dollars of efficiencies and synergies. Indeed, not only have they declined to share such critical supporting information with the Commission, they have kept it from their economic experts and financial advisors as well. As the Commission has made clear, however, claims that are "vague or speculative, and cannot be verified by reasonable means" will not be considered in determining whether the public interest benefits of a proposed merger outweigh the competitive harms.

Even without access to the supporting information, there are good reasons to doubt the reliability of the Applicants' assertions. The anticipated efficiencies flow from sources (e.g., access charge reductions and lower costs of terminating traffic) that seemingly cannot produce the magnitude of savings claimed by WorldCom and MCI. In addition, other savings apparently result from discontinued or diminished investment and from "revenue enhancements" flowing from less robust long distance and local competition. Finally, even if the Applicants would reap efficiencies and synergies as a result of the merger, they have failed to demonstrate that such benefits would be passed on to consumers in the less competitive post-merger environment.

Set forth below and in the attached affidavits is a critique of the merger applying the *Bell Atlantic/NYNEX* analytical framework. The Applicants simply flunk that test. There are no facts to support their claims, and they have consistently misstated the applicable standard of review in a self-serving way. Accordingly, the proper course of action is to dismiss the applications or conduct evidentiary proceedings to test their unsubstantiated assertions in the crucible of public fact-finding.

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ON WORLDCOM/MCI'S JOINT REPLY TO PETITIONS TO DENY AND COMMENTS**

GTE Service Corporation, its affiliated telecommunications companies,¹ and GTE Internetworking (collectively "GTE"), by their attorneys, respectfully submit their Comments on the Joint Reply² filed by WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI") in the above-captioned proceeding. As requested by the Common Carrier Bureau Chief's *Order*, these comments address the "application of the merger framework . . . articulated in the *Bell Atlantic/NYNEX* and *BT/MCI* merger

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, and GTE Hawaiian Tel International Incorporated.

² Joint Reply of WorldCom, Inc. and MCI Communications Corporation to Petitions to Deny and Comments, CC Docket No. 97-211 (filed Jan. 26, 1998) ("Joint Reply").

proceedings" to WorldCom's proposed acquisition of MCI.³ In particular, these Comments examine the showings in the Applicants' Joint Reply with respect to "relevant product and geographic markets, the actual, potential, and precluded competitors in these markets . . . barriers to entry or expansion into these markets . . . potential competitive effects and efficiencies resulting from the merger and other possible effects that may be relevant to the Commission's public interest assessment."⁴

Overall Compliance with Bell Atlantic/NYNEX. As detailed in these Comments (Section I), the WorldCom applications to acquire MCI are devoid of any tangible evidence concerning the competitive and public interest effects of the transaction. While the Applicants' subsequent Joint Reply "contains over two hundred pages of factual information, legal arguments and expert affidavits,"⁵ very little of that material is even remotely responsive to the types of showings required under *Bell Atlantic/NYNEX*. This continuing attempt to evade scrutiny is particularly disturbing given the clear and compelling documentation by GTE and other petitioners of adverse competitive effects

³ *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Order, DA 98-384, ¶ 4 (rel. Feb. 27, 1998) ("Order"). See *Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, 12 FCC Rcd 19985 (1997) ("*Bell Atlantic/NYNEX Order*"); *The Merger of MCI Communications Corporation and British Telecommunications PLC*, 12 FCC Rcd 15351 (1997) ("*BT/MCI Order*").

⁴ *Id.*

⁵ *Id.*, ¶ 3

permeating the transaction.⁶ Consequently, on the basis of the current record, the Commission should dismiss the transfer requests.

*Interexchange Services.*⁷ With respect to interexchange services (Section II), WorldCom and MCI have attempted to rewrite the Commission's definitions of product and geographic markets to minimize the inherent anticompetitive effects of combining the second and fourth largest carriers in an already highly concentrated industry. Under their theory, there is no separate wholesale or retail market and no submarkets such as residential and small business, medium-sized business, and large business customers. There is only a single, integrated market for any and all types of interexchange services for any and all types of consumers. The Applicants also elevate hundreds of small interexchange carriers operating on local or regional bases into most significant market participants on a par with AT&T, MCI, Sprint and WorldCom, and suggest that the marketplace is overrun with numerous new alternatives for fiber capacity. In this view of today's interexchange marketplace, price collusion by the largest carriers is purportedly implausible and discrimination against resellers needing wholesale capacity is deterred.

⁶ A chart summarizing the *Bell Atlantic*/NYNEX standard and the competitive effects of the proposed merger in each relevant market is attached as Appendix 1 (hereto). A chart identifying the Herfindahl-Hirschman Index ("HHI") effects of the proposed merger on the long distance, international, private line services, international message telephone service, and Internet markets is attached as Appendix 2 (hereto).

⁷ GTE's position on the adverse effects of the proposed merger on retail and wholesale interexchange markets is supported by the attached Long Distance Affidavit of Robert G. Harris ("Harris LD Affidavit") (Appendix 3 hereto) and by the attached Long Distance Affidavit of Drs. Richard Schmalensee and William Taylor ("Schmalensee/Taylor Affidavit") (Appendix 4 hereto).

The world postulated by WorldCom and MCI, however, simply does not exist. There are distinct differences between wholesale and retail services just as there are distinct differences between the needs of large businesses versus smaller businesses and residential customers. Price collusion is not a myth, but rather a real problem that would only be exacerbated by shrinking the Big Four down to the Big Three. Nor do facilities-based networks spring up fully formed overnight with the coverage and capabilities to meet reseller needs – they require years of construction and implementation. In the mean time, competition and the public would be irreparably harmed if the merger were approved.

International Services. WorldCom and MCI project an equally distorted view of the international marketplace (Section III). According to them, all international services fit in one indistinguishable market characterized by robust competition on a global basis – even though the Applicants' product and geographic market definitions are wholly at odds with market realities and Commission precedent. Brushed aside with equal dismissiveness are the danger signs lighting up for private line and IMTS customers needing services to scores of countries throughout the world where the combined company would be the predominant or even sole provider. Yet, WorldCom and MCI offer no documentation to confirm their unique perspective on the state of competition in international services.

*Internet.*⁸ The Applicants' treatment of the Internet is perhaps the most startling (Section IV). Notwithstanding prior Commission staff analyses to the contrary,

⁸ GTE's position regarding the adverse effects of the merger on the Internet backbone
(Continued...)

WorldCom and MCI have redefined the product and geographic markets to include anything and anyone connected or involved in any way with the provision of Internet services to anywhere in the world. In fact, however, the merger would create, for the first time, a company capable of dominating the Internet through control of approximately 50 percent or more of the backbone network that undergirds cyberspace. Despite the Applicants' protestations to the contrary, this dominance not only invites anticompetitive conduct, but also gives the combined firm the ability and incentive to control Internet access and pricing and, ultimately, to become the sole Internet backbone provider.

Local Exchange and Exchange Access. WorldCom and MCI's characterization of the local exchange market is equally off-kilter (Section V). They seem to suggest that the relevant geographic market for assessing competitive effects is limited to the precise routes where the two companies' facilities lie in the ground. No matter that they are in the same markets competing for the same big business customers. Moreover, WorldCom and MCI offer no insights or information concerning the effects of the merger upon any category of local exchange customers. In contrast, Wall Street analysts are quite happy to note that a "benefit" of the merger will be reduced price competition in the local exchange.

Public Interest Benefits. In the face of clear anticompetitive consequences flowing from their proposed merger, the claimed public interest benefits remain a

(...Continued)
market is supported by the attached Internet Affidavit of Robert G. Harris ("Harris Internet Affidavit") (Appendix 5 hereto).

mystery shrouded in a cloak of secrecy and ambiguity (Section VI). Billions and billions of dollars in efficiency gains and cost savings are cited as the key to the merger. In the Joint Reply, the Applicants' consultants say that the claimed benefits must be true – even though they have *never* examined the underlying data or assumptions – because WorldCom and MCI's financial advisors have said so. Unfortunately, those same financial advisors acknowledge in SEC filings that they have not reviewed the data or assumptions either. Obviously, no one can or will be able to test the claims of WorldCom and MCI unless and until they place the facts in the record – something that they have refused to do.

* * *

What follows is a critique of the proposed merger applying the analytical framework of *Bell Atlantic/NYNEX*. The Applicants simply flunk that test. There are no facts to support their claims, and they have consistently misstated the applicable standards for review in a self-serving manner. Accordingly, the proper course of action is to dismiss the applications or conduct evidentiary proceedings to test their unsubstantiated assertions in the crucible of public fact-finding.

I. WORLDCOM AND MCI HAVE NOT COMPLIED WITH THE BELL ATLANTIC/NYNEX MERGER STANDARD AND HAVE NOT CARRIED THEIR BURDEN OF PROOF.

As GTE and a number of other commenters have explained throughout this proceeding, the Commission has adopted a detailed analytical framework for reviewing the potential anticompetitive effects of horizontal mergers involving actual or potential competitive overlaps. In adopting this framework, the Commission made it expressly

clear that the burden "is on the applicants to demonstrate that the transaction will be in the public interest, convenience and necessity."⁹ Specifically, applicants must affirmatively demonstrate that the "harms to competition . . . are outweighed by benefits that enhance competition."¹⁰ Further, "applicants carry the burden of showing that the proposed merger would not eliminate potentially significant sources of the competition that the Communications Act . . . sought to create."¹¹ As the Commission explicitly stated in the *Bell Atlantic/YNEX* proceeding, "[i]f applicants cannot carry this burden, the applications must be denied."¹²

The Commission's framework for evaluating mergers involves a series of steps requiring applicants to address the following:

- Definition of relevant product market(s);
- Definition of relevant geographic market(s);
- Identification of most significant market participants;
- Evaluation of the potential effects on competition, including an assessment of how the proposed merger will affect the three customer groups recognized by the Commission (residential customers and small businesses; medium-sized businesses; and large businesses/government users); and
- Identification of any public interest benefits/efficiencies that enhance competition and therefore outweigh any anticompetitive effects.

⁹ *Bell Atlantic/YNEX Order* at 20009, ¶ 37.

¹⁰ *Bell Atlantic/YNEX Order* at 19987, ¶ 2.

¹¹ *Bell Atlantic/YNEX Order* at 19988, ¶ 3.

¹² *Bell Atlantic/YNEX Order* at 19987, ¶ 2; *see also Bell Atlantic/YNEX Order* at 20007, ¶ 36 ("Failure to carry the burden of proof means the Commission must deny the applications or designate them for hearing.").

Notably, the pro-competitive benefits claimed by applicants may include efficiencies arising from the transaction; however, such efficiencies must be: (1) "achievable only as a result of the merger"; (2) "sufficiently likely and verifiable"; and (3) "not the result of anticompetitive reductions in output or increases in price."¹³ Again, "[a]pplicants bear the burden of showing both that merger specific efficiencies will occur, and that they sufficiently offset any harm to competition"¹⁴ WorldCom and MCI cannot be deemed to have carried their burden "if their efficiency claims are vague or speculative, and cannot be verified by reasonable means."¹⁵

As the Common Carrier Bureau recognized in its recent *Order*, the *Bell Atlantic/NYNEX* standard clearly applies to this transaction.¹⁶ WorldCom and MCI nonetheless have made every attempt to ignore or circumvent the FCC's analytical framework. They have failed to conduct a thorough and reasoned assessment of the potential competitive effects in the various relevant markets or to verify and substantiate their claimed efficiencies and synergies. It is not enough to state simply that the merger is in the public interest because "the two companies bring complementary strengths to the merger,"¹⁷ or that the merger will not have anticompetitive effects in the domestic

¹³ *Bell Atlantic/NYNEX Order* at 20063, ¶ 157.

¹⁴ *Bell Atlantic/NYNEX Order* at 20064, ¶ 158.

¹⁵ *Bell Atlantic/NYNEX Order* at 20064, ¶ 158.

¹⁶ See *Application of WorldCom, Inc. and MCI Communications Corporation*, *supra* note 3.

¹⁷ Joint Reply at 9.

long distance market because AT&T "will still be twice the size of MCI WorldCom."¹⁸ As required by the Commission, the Applicants must proffer data and analyses rather than uncorroborated blanket assertions.

Indeed, not only have the Applicants disregarded the *Bell Atlantic/NYNEX* standard, but they have attempted to shift the burden of proof to the petitioners. For example, WorldCom and MCI chastise the petitioners because they "offer no economic testimony addressing" the issue of reduced competition in the long distance market.¹⁹ As demonstrated above, however, the Commission has made clear that *applicants*, not petitioners or commenters, bear the burden of proving that the merger complies with the Commission's standards.

Applying the *Bell Atlantic/NYNEX* merger framework, GTE and numerous other commenters have made a compelling showing that the WorldCom/MCI merger will have anticompetitive effects in numerous relevant product and geographic markets. As demonstrated below, the Joint Reply does nothing to rebut this showing, let alone demonstrate affirmative compliance with the Commission's requirements. Given this failure to provide relevant data and meaningful analysis, it is virtually impossible for the Commission to make a reasoned public interest determination. Accordingly, the Commission should summarily deny the applications or set them for evidentiary hearings. At a minimum, any further consideration of the merits of the applications must be preceded by disclosure and public review of all Hart-Scott-Rodino and related

¹⁸ Joint Reply at 41.

¹⁹ Joint Reply at 31.

materials, once the Applicants have come into substantial compliance with the Department of Justice's ("DOJ") request.

II. THE APPLICANTS HAVE IGNORED THE *BELL ATLANTIC/NYNEX* REQUIREMENTS AND HAVE NOT OVERCOME GTE'S SHOWING THAT THE MERGER WILL HARM COMPETITION IN THE WHOLESALE AND RETAIL LONG DISTANCE MARKETS.

Based on a step-by-step application of the *Bell Atlantic/NYNEX* analytical framework, GTE's Petition raised serious concerns that the merger of WorldCom and MCI would reduce competition in the supply of long distance services. GTE showed that:

- there are separate retail and wholesale long distance markets;
- the Applicants had provided no information regarding relevant geographic markets;
- AT&T, MCI, Sprint, and WorldCom will be the only significant participants in retail sub-markets for the foreseeable future;
- WorldCom is the leading provider of wholesale capacity and advanced capabilities to resellers; and
- The retail long distance market, particularly for residential and small business customers, is already dominated by the Big 3 IXC's and beset by coordinated rather than competitive pricing.

In addition, GTE explained that, following the merger, WorldCom's incentives would change. It would no longer act as a low-cost, responsive wholesaler, because doing so would cannibalize its newly expanded retail customer base. Rather, WorldCom would raise prices to resellers serving residential and small business customers. The remaining members of the Big 3, who at present are forced to be at least minimally responsive in supplying resellers to avoid losing traffic to WorldCom, will

become even more reluctant to participate in the wholesale market. Resellers, faced with higher costs and already thin margins, would have to raise their rates to mass market customers. In short, resellers would become less viable competitors to the Big 3 and prices to residential and small business consumers would rise.

In their Joint Reply, WorldCom and MCI argue that the long distance market (undifferentiated between retail and wholesale products and between various classes of customers) is intensely competitive and that new entry will assure that it remains so, notwithstanding the combination of the second and fourth largest carriers. However, they provide no supporting information to validate their views and conspicuously disregard both the *Bell Atlantic/NYNEX* analytical framework and the substantive determinations as to market definition and market participants made in that *Order*. Indeed, while their own expert concedes that the DOJ Merger Guidelines demand "a full analysis of the competitive effect of the merger,"²⁰ WorldCom and MCI have utterly failed to engage in such an examination.

The following discussion details the shortcomings of the Joint Reply and confirms that the Applicants have not carried the burden placed on them by *Bell Atlantic/NYNEX*. Consequently, GTE continues to believe that dismissal of the applications is warranted given their patent non-compliance with the Commission's standards for assessing horizontal mergers involving significant overlaps. Alternatively, the applications should be denied because WorldCom and MCI have failed to prove that the merger would not adversely affect long distance competition, in the face of

²⁰ Declaration of Robert E. Hall (attached to the Joint Reply) ("Hall Declaration") at 26.

powerful demonstrations to the contrary by GTE and other petitioners. If the Commission nonetheless declines to dismiss or deny the applications outright, it must direct the parties to supply sufficient, detailed information – including all Hart-Scott-Rodino submissions – to enable the Commission and interested parties to develop a comprehensive record regarding the effects of the merger on the retail and wholesale long distance markets.

A. The Applicants' Superficial Discussion of Long Distance Product Markets Conflicts with Commission Precedent and Is Unsupported by Any Evidence.

Under the *Bell Atlantic/NYNEX* standard, "[t]he first step in a merger analysis is to define the relevant product and geographic markets," and the burden of doing so clearly falls on the Applicants.²¹ Consistent with the *Bell Atlantic/NYNEX* decision, GTE's Petition identified the supply of retail and wholesale domestic long distance services as two separate product markets.²² The Joint Reply, without explicitly addressing the *Bell Atlantic/NYNEX* analytical framework, essentially denies the existence of separate retail and wholesale markets.²³ This position is untenable for two reasons.

²¹ *Bell Atlantic/NYNEX Order*, ¶ 49; see also *BT/MCI Order*, ¶ 35; *Nextel/Pittencrieff Order*, ¶ 12.

²² *Bell Atlantic/NYNEX Order*, ¶¶ 114-120, GTE Petition at 10-29.

²³ For example, the Joint Reply states that "it is important to emphasize that, despite petitioners' discussion of wholesale services as if such services constituted a distinct market, no bright line separates wholesale and retail 'markets.'" Joint Reply at 49.

First, by conflating the wholesale and retail long distance markets, WorldCom and MCI ignore the Commission's determination that the effects of mergers on input markets must be separately examined. To override this determination, the Applicants would have had to demonstrate that purchasers of wholesale capacity and advanced services for resale could readily substitute retail services in the face of a price increase by wholesalers.²⁴ They have made no effort to do so, however, and such a showing is not possible in any event.

Second, the claim that there is no separate wholesale market is contradicted by both of the Applicants' experts. The Carlton/Sider Declaration expressly acknowledges that there are separate wholesale and retail market segments, although it finds some overlap between them.²⁵ Similarly, Professor Hall discusses the wholesale and retail markets in two distinct sections of his Affidavit, plainly recognizing that these two markets must be individually analyzed.²⁶ Accordingly, the Commission should adhere to its practice of treating the supply of input (wholesale) and final (retail) products as falling in separate markets when considering the effects of the proposed merger on the supply of long distance services.

The *Bell Atlantic/NYNEX* decision also makes clear that applicants must address the impact of the merger on different product sub-markets relating to discrete classes of

²⁴ *Bell Atlantic/NYNEX Order*, ¶ 50 & n.112.

²⁵ Declaration of Dennis W. Carlton and Hal S. Sider (attached to the Joint Reply ("Carlton/Sider Declaration")) at 13 n.17.

²⁶ Hall Declaration, §§ III, IV.

customers (specifically, residential consumers and small businesses, medium-sized businesses, and large businesses and government users).²⁷ Once again, WorldCom and MCI have essentially ignored this aspect of the *Bell Atlantic/NYNEX* analytical framework. For example, they have supplied no information regarding their respective market shares and operating margins for these sub-markets and have not definitively stated their plans for serving each sub-market if the merger is approved. Clearly, then, the Joint Reply does not satisfy the *Bell Atlantic/NYNEX* requirements relating to the definition of long distance product markets.

B. WorldCom and MCI Have Failed To Address the Relevant Long Distance Geographic Markets.

The *Bell Atlantic/NYNEX* decision explains that a relevant geographic market is an area "in which all customers . . . will likely face the same competitive alternatives for a product."²⁸ With respect to long distance services, the Commission held that each point-to-point market constitutes a separate geographic market, but that such markets could be grouped "where customers faced the same competitive conditions."²⁹ Notwithstanding this clear direction, neither the applications nor the Joint Reply provides any information that would enable the Commission and interested parties to determine whether the merger's adverse effects may be particularly egregious in specific locations or regions.

²⁷ *Bell Atlantic/NYNEX Order*, ¶ 53.

²⁸ *Id.*, ¶ 54.

²⁹ *Id.*

For example, WorldCom and MCI have not even provided basic market share or capacity data broken down by state or by individual routes where they may control a predominant portion of available capacity. This information is critical because resellers and smaller facilities-based carriers rely heavily on these carriers to provide nationwide coverage, and other sources of supply may not be available on many routes. Moreover, as explained in the attached Affidavit of Dr. Robert Harris (Appendix 3 hereto), there are serious constraints in the availability of high capacity circuits on many routes, meaning that the carriers controlling the existing facilities have essentially unbridled power to increase prices in both the wholesale and retail markets.³⁰ Consequently, geographically disaggregated data must be provided and analyzed before the full impact of the merger can be assessed.

C. WorldCom and MCI Have Failed Realistically To Identify the Most Significant Competitors in the Long Distance Market.

After defining the relevant product and geographic competitors, the *Bell Atlantic/NYNEX* standard requires applicants to identify "the most significant market participants" in each relevant market.³¹ According to the Commission, these entities are companies "that have, or are likely to speedily gain, the greatest capabilities and incentives to compete most effectively and soonest in the relevant market."³² Based on this standard, GTE explained in its Petition that AT&T, MCI, Sprint, and WorldCom are

³⁰ Harris LD Affidavit at 17.

³¹ *Bell Atlantic/NYNEX Order*, ¶ 58.

³² *Id.* ¶ 62.